

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THE GILLETTE COMPANY,

Plaintiff,

v.

DOLLAR SHAVE CLUB, INC., *et al.*,

Defendants.

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)  
) REDACTED - PUBLIC VERSION  
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C.A. No. 15-1158-LPS-CJB  
)  
)  
)

**JOINT MOTION TO REDACT TRANSCRIPT**

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Dated: November 13, 2018

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Plaintiff The Gillette Company (“Gillette”) and Defendants Dollar Shave Club, Inc. (“DSC”), Pace Shave, Inc. (“Pace Shave”), and Dorco Company Ltd. (“Dorco”) (collectively “the Defendants”) respectfully move the Court to redact certain limited portions of the October 15, 2018 Hearing Transcript (hereinafter, “Transcript”), the disclosure of which would cause a clearly defined and serious injury to the parties. The grounds for this motion are fully set forth below, and the requested redactions are reflected in the documents attached as Exhibit A (highlighted) and Exhibit B (redacted).

1. Throughout the Transcript, the parties extensively discuss propriety information regarding Dorco’s technical documents, processes, and facilities. *See generally* October 15, 2018 Hearing Transcript. This discussion includes confidential details regarding Dorco’s manufacturing processes, product specifications, and business plans. *See id.* at 17:20-24. This information is confidential and competitively sensitive, and its disclosure would cause harm to Dorco. All such information and documents addressed in this hearing were produced and/or designated by Dorco as “Highly Confidential – Outside Counsel’s Eyes Only” pursuant to the Protective Transcript in this case.

2. Although “[t]he public has a common law right of access to judicial proceedings and records,” this right “is not absolute[.]” *MOSAID Techs. Inc. v. LSI Corp.*, 878 F. Supp. 2d 503, 507 (D. Del. 2012). “Every court has inherent supervisory power, and the Third Circuit has held that courts may exercise that power to deny access to judicial records, for example, ‘where they are sources of business information that might harm a litigant’s competitive standing.’” *Id.* (quoting *Littlejohn v. BIC Corp.*, 851 F.2d 673, 677-78 (3d Cir. 1988)).

3. A party seeking to redact a judicial record must establish good cause, which requires a specific showing “that disclosure will work a clearly defined and serious injury to [that party].” *Id.* (quotation marks and citations omitted). “Assessing whether good cause exists to seal

a judicial [record] generally involves a balancing process, in which courts weigh the harm of disclosing information against the importance of disclosure to the public.” *Id.* at 507-08. In conducting this balancing process, courts in the Third Circuit may consider a variety of factors, including “whether disclosure will violate any privacy interests” and “whether the case involves issues important to the public.” *Id.* at 508 n.2 (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 787-91 (3d Cir. 1994)).<sup>1</sup>

4. The parties seek to redact those portions of the Transcript relating to Dorco’s confidential manufacturing processes, product specifications, and business plans, which—if disclosed to the public—would reveal competitively sensitive information about Dorco.

5. Disclosure of this information would cause clearly defined and serious injuries to the parties.<sup>2</sup> For example, someone learning the details of Dorco’s proprietary manufacturing processes might use that information to develop a competitive product. This risk is particularly acute here, where the Transcript includes specific details of the product’s composition and materials used to manufacture that product. This is a highly competitive industry where competitors look for any angle they can find to gain an advantage, and releasing this information to the public would cause serious harm to Dorco. Multiple courts in the Third Circuit have recognized that manufacturing details and other non-public, confidential business information is entitled to protection. *See In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653, 658 (D.N.J. 2004) (“research and development, processes, secret chemical formulas, [and] the parties’ suppliers”); *Joint Stock Soc. v. UDV N. Am., Inc.*, 104 F. Supp. 2d 390, 396 (D. Del. 2000) (“vodka formulas,

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<sup>1</sup> The remaining *Pansy* factors have no bearing on this motion. *See id.*

<sup>2</sup> Gillette does not join in the arguments in this paragraph but does not oppose Dorco’s request to redact the portions of the Transcript referred to by Dorco.

consumer research studies, strategic plans, potential advertising and marketing campaigns or financial information”); *United States v. Dentsply Int'l, Inc.*, 187 F.R.D. 152, 159 (D. Del. 1999) (“sales and marketing plans, financial forecasts, margin, pricing, cost and customer information”).

6. Moreover, although the public may have a general interest in the outcome of this litigation, “[t]he presence of trade secrets or other confidential information weighs against public access and, accordingly, documents containing such information may be protected from disclosure.” *In re Gabapentin*, 312 F. Supp. 2d at 664; *see also Pansy*, 23 F.3d at 788 (“[I]f a case involves private litigants, and concerns matters of little legitimate public interest, that should be a factor weighing in favor of granting or maintaining an order of confidentiality.”); *LEAP Sys., Inc. v. MoneyTRAX, Inc.*, 638 F.3d 216, 222–23 (3d Cir. 2011) (affirming district court’s refusal to unseal portions of a transcript that reflected the terms of a confidential settlement agreement, noting that “[t]he parties are private entities, their dispute has no impact on the safety and health of the public, and their settlement agreements demonstrate a clear intent to maintain confidentiality”). The fact that this sensitive information was discussed in a judicial order does not transform it into a matter of public interest. The public will be able to understand the Court’s rulings without the need to review Dorco’s confidential information. Indeed, the only suggested redactions to any statement made by the Court during the hearing refers to confidential terminology<sup>3</sup> used internally by Dorco and two statements regarding Dorco’s confidential business plans. Aside from these, all additional redactions were made only to the parties’ arguments.

7. Given the serious risk of competitive harm and the lack of any public interest in the confidential details of Dorco’s manufacturing process, Dorco has established good cause to redact the limited portions of the Transcript highlighted in Exhibit A.

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<sup>3</sup> That terminology includes an acronym that is descriptive of the blade’s manufacturing process.

WHEREFORE, the parties respectfully request that the Court grant this motion and direct the Clerk of the Court to docket the redacted Transcript attached as Exhibit B.

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**CERTIFICATE OF SERVICE**

I, David M. Fry, hereby certify that on November 13, 2018, this document was served on the persons listed below in the manner indicated:

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THE GILLETTE COMPANY,	)	
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Plaintiff,	)	
	)	
v.	)	C.A. No. 15-1158-LPS-CJB
	)	
DOLLAR SHAVE CLUB, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**[PROPOSED] ORDER**

At Wilmington this \_\_\_\_ day of \_\_\_\_\_, 2018, having considered the parties' Joint Motion to Redact Portions of the October 15, 2018 Hearing Transcript, IT IS HEREBY ORDERED that the motion is GRANTED.

The Clerk of the Court shall docket the redacted version of the transcript attached as Exhibit B to the motion. The original, unredacted version shall be kept permanently under seal.

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United States District Judge

# **Exhibit A**

# **REDACTED**

# **Exhibit B**

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

THE GILLETTE COMPANY,

Plaintiff,

v.

DOLLAR SHAVE CLUB, INC., DORCO  
COMPANY LTD., and PACE SHAVE, INC.,

Defendants.

CIVIL ACTION NO.

15-1158-LPS-CJB

Wilmington, Delaware  
Monday, October 15, 2018  
*Telephone Conference*

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

APPEARANCES:

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and

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5 KIRKLAND & ELLIS, LLP

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HELENA D. KIEPARA, ESQ.

(Washington, District of Columbia)

7 Counsel for Dollar Shave Club, Inc.,  
8 Dorco Company Ltd., and Pace Shave, Inc.

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23 P R O C E E D I N G S

24 (REPORTER'S NOTE: The following telephone  
25 conference was held in chambers, beginning at 2:33 p.m.)

1 THE COURT: Good afternoon, counsel. This is  
2 Judge Stark. Who is there, please?

3 MR. SMITH: Good afternoon, Your Honor. It's  
4 Rodger Smith at Morris Nichols on behalf of the plaintiff  
5 Gillette, along with Mark Abate, Michael Cottler, and  
6 Jennifer Albert from Goodwin Procter.

7 THE COURT: Okay.

8 MR. FRY: Good afternoon, Your Honor. This is  
9 David Fry from Shaw Keller on behalf of the defendants; and  
10 with me on the line today are Christopher Mizzo and Helena  
11 Kiepura from Kirkland & Ellis.

12 THE COURT: I have my court reporter here with  
13 me. For the record, it is our case of The Gillette Company  
14 versus Dollar Shave Club Inc., et al, Civil Action No.  
15 15-1158-LPS. And this is the time we set to talk about  
16 discovery-related disputes that both sides have raised. I  
17 wanted to start first with the issue raised by Gillette  
18 regarding the [REDACTED] blades. So let me hear from Gillette on  
19 that, please.

20 MR. ABATE: Thank you, Your Honor. This is Mark  
21 Abate.

22 So during discovery, before the Third Circuit  
23 entered the stay in this case, we saw some passing references  
24 in the documents to [REDACTED] That was concerning to us because  
25 [REDACTED] was not a search term used by the defendants in the

1 collection and production of their electronic documents in  
2 this case.

3 So we requested additional discovery at that  
4 time, including product samples. In response, defendants  
5 represented to us that [REDACTED]  
6 [REDACTED] and they refused to  
7 give us that discovery.

8 So then we fast forward to we have the stay in  
9 place. The arbitration tribunal issues a decision, and the  
10 Third Circuit lifts the stay; and we approached the defendants  
11 to negotiate a new schedule, and the parties had competing  
12 schedules. We submitted them to Your Honor. Your Honor  
13 entered a schedule in August. As part of that, we dropped  
14 some patent claims, from 21 down to seven.

15 About a week later, the defendants produce a  
16 product sample. And we say what is this? They say, well,  
17 this is the [REDACTED] product; and it has been imported since  
18 March of 2018.

19 So this is in August. In August, then we again  
20 asked for additional discovery concerning [REDACTED] At that  
21 time, there was time in the schedule to deal with it, and  
22 we could have dealt with it. We specifically asked for the  
23 same types of discovery that we had for the other products,  
24 the two other classes of products that are accused in the  
25 case. We also asked for resumption of 30(b)(6) depositions

1 to be able to question about the documents; and defendants  
2 refused.

3 That brings us to today. And what we propose  
4 in our letter is sort of handling this one of two ways:  
5 either grant our motion for a protective order to keep it  
6 out of the case so that there is no issue as to estoppel or  
7 negative implications, things like that, or alternatively  
8 grant discovery on it; and if there is discovery granted on  
9 it, we would ask for certain accommodations, which I could  
10 get into, such that we can actually complete the discovery  
11 in time so we can keep our current trial schedule.

12 With respect to the protective order, our  
13 thinking is simply that at some point in the case, discovery  
14 has to end. New products are always being introduced. This  
15 case has already been delayed over a year because of our  
16 trip to the arbitrators; and a protective order would just  
17 guarantee that this case can go forward, we can have our  
18 April trial without any further delay. Alternatively, we're  
19 requesting more fulsome discovery on [REDACTED]

20 Let me address two aspects: The one is  
21 discovery. And the second, why more fulsome discovery is  
22 needed.

23 So in terms of the current status, the  
24 production on [REDACTED] is paltry. They claim to have produced  
25 [REDACTED] documents, but, Your Honor, in this case, defendants



1 have produced over [REDACTED] documents. So [REDACTED] amounts to  
2 about two and-a-half percent of the production. That's  
3 clearly not a commensurate production that we have for the  
4 other products in the case.

5 Dollar Shave Club in particular produced a  
6 single document, a fully formed 48 page report, but no other  
7 documents. I mean there has got to be some other backup  
8 that occurred leading up to the creation of this [REDACTED]

9 There were the product samples I mentioned and  
10 also additional [REDACTED] documents produced after the stay was  
11 lifted. That is, of course, after all the witnesses were  
12 deposed. So we have no depositions on those documents. And  
13 I think by virtue of the fact that they were produced at  
14 the end of discovery, it's fair to assume that these are  
15 probably very important documents that defendants would rely  
16 on if [REDACTED] was in the case.

17 So how could we possibly be expected to accuse  
18 the product and go to trial on it when we haven't had any  
19 deposition testimony on these new documents or the new  
20 product samples? How could our expert rely on any of these?  
21 How could we possibly cross-examine on them? It's just not  
22 feasible.

23 Now, there were some [REDACTED] documents produced  
24 before the stay, that is true, but they're mostly in the  
25 nature of what I would call [REDACTED] documents as opposed to

1 documents stating [REDACTED]

2 [REDACTED] And, importantly, the pre-stay  
3 documents only reference work on [REDACTED] in passing, and that  
4 is I think largely because the search terms didn't use the  
5 term [REDACTED] We used the names of the other products in the  
6 search terms.

7 There was one very technical document produced  
8 before the stay on [REDACTED] We used that one at a deposition; and  
9 the [REDACTED]

10 [REDACTED]  
11 [REDACTED]  
12 So that is the status of where we are. The  
13 reason why we would request further discovery, if we're asked  
14 to bring [REDACTED] into the case, is you can see in Exhibit 12 to  
15 our letter brief is selected pages of our infringement  
16 contentions. What you see there, there are lots of [REDACTED]  
17 in the documents that go to infringement issues in the case.

18 So, for example, these are the documents in the  
19 current infringement contentions, those are the documents  
20 as to the two classes of products that we have accused. So  
21 the documents describe those products as having, for example,

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED] which goes  
25 to a dependent claim.



1 [REDACTED] That is Exhibit 1. In their brief, they cite page  
2 816 of that exhibit.

3 One other thing. On the documents they cite  
4 [REDACTED] which is documents 13 through 16, those  
5 documents don't even reference [REDACTED] So there is no way I  
6 can link those [REDACTED] unless I have  
7 deposition testimony. So if we're going to go forward  
8 with [REDACTED] in this case, in fairness, we just need additional  
9 discovery, and we can talk about some accommodations I would  
10 ask for in the schedule if the Court is inclined to go that  
11 way.

12 But let me just turn to our motion for protective  
13 order.

14 In our view, it was a little underhanded the way  
15 the negotiation on the schedule was treated and the dropping  
16 of claims. As I mentioned, they represented to us [REDACTED]  
17 [REDACTED]  
18 And then we negotiated the whole schedule -- this was over the  
19 course of about two months. We're negotiating the schedule,  
20 negotiating the dropped claims and dropped prior art  
21 references, and at no time at all were they mentioning [REDACTED] or  
22 that they wanted to bring [REDACTED] into the case. And they wait  
23 until a week after we drop claims and a week after the Court  
24 entered the schedule in the case to tell us about [REDACTED]

25 In our view, it's just too late to interject it

1 into the case. We're into expert discovery now. We have  
2 already exchanged the burden of proof of reports, and the  
3 case has been delayed a year. We just don't think we should  
4 have to have the trial date pushed out because of their  
5 conduct with respect to how they handled [REDACTED] and making it  
6 known to us when the case resumed.

7 THE COURT: Mr. Abate, let me interrupt you with  
8 just a couple quick questions before we move on.

9 MR. ABATE: Sure.

10 THE COURT: They suggest that given the claims  
11 you dropped, we can tell that you wouldn't have dropped  
12 different claims if you knew [REDACTED] was going to be part of  
13 this case. Respond to that.

14 MR. ABATE: I can't say that for certain. We  
15 have very little discovery on [REDACTED] so I can't say for  
16 certain that we would not have dropped the claims that we  
17 dropped if [REDACTED] were in the case.

18 Now, for example, they point to some claims that  
19 had the doping limitation, but remember also there were some  
20 method claims in the patent. And we dropped those as part  
21 of this. There was an overall agreement we dropped those to  
22 avoid certain plant discovery inspection, but had [REDACTED] been  
23 in the case, perhaps we would have maintained that process  
24 claim and would have gone forward with the plant inspection.

25 THE COURT: All right.

1 MR. ABATE: I cannot say categorically we would  
2 have taken a different tact had we known about [REDACTED] and had  
3 discovery on it because right now I don't know much about  
4 that product.

5 THE COURT: Okay. Just briefly, if I don't do  
6 the protective order, whatever accommodations you have in  
7 mind, would they keep us on track for an April schedule, in  
8 your view?

9 MR. ABATE: Well, that is what we would want to  
10 do. I can tell you what they are quickly.

11 THE COURT: I don't want to get into the details  
12 of them.

13 MR. ABATE: Yes.

14 THE COURT: I just want to understand if you  
15 thought the trial date was still possible? It sounds like  
16 you do think it is possible.

17 MR. ABATE: Yes. And the one point -- I think  
18 the parties could negotiate a new schedule, but the one  
19 thing we need the Court to do, you entered the dates for  
20 completion of summary judgment and *Daubert* motions. You  
21 entered that in one of your orders, so that is not something  
22 the parties can move, so we would have to have the Court  
23 move that, and we can work with the other dates to make  
24 everything happen.

25 THE COURT: If I did the protective order, would

1 you envision that, meaning at trial, the world would be as  
2 if [REDACTED] doesn't exist or could parties, for instance, still  
3 point to it for other purposes? I don't know, if it's  
4 allegedly a noninfringing alternative or something like that  
5 or would it be it just doesn't exist?

6 MR. ABATE: It doesn't exist is how we would  
7 handle it. And the reason why is we don't want a negative  
8 inference being drawn. For example, the one you just  
9 mentioned, that there is a noninfringing alternative out  
10 there. I wouldn't want that to be drawn. I think in  
11 fairness, you either be able to accuse it or it has to be  
12 out of the case altogether.

13 THE COURT: All right. Thank you. Let me hear  
14 from the defendants on this first dispute.

15 MS. KIEPURA: Your Honor, Helena Kieपुरa for  
16 defendants.

17 So just at the outset, one thing that we want  
18 to point out is that Pace has asserted counterclaims of  
19 noninfringement in this case. This isn't really a motion  
20 for a protective order, it's a motion to dismiss. Pace  
21 is entitled to have the Court decide whether [REDACTED] infringes,  
22 even if Gillette is arguing that it wants to drop its  
23 infringement claims against it, which it appears to have  
24 done given its failure to provide any sort of proof  
25 whatsoever despite having discovery.

1                   So moving on to the second issue. Even if it  
2                   was proper for them to be seeking some sort of protective  
3                   order, that should be denied as well because Gillette, they  
4                   are mischaracterizing the discovery that it had regarding  
5                   [REDACTED] and they had all the discovery they needed to make an  
6                   infringement case against [REDACTED] They just simply have chosen  
7                   not to do so.

8                   So prior to the stay, Gillette had all the core  
9                   technical documents it needed to accuse [REDACTED] of infringement.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17                   They had over [REDACTED] documents. This included R&D  
18                   reports and testing reports. And to their point that that is  
19                   a smaller production than as to the other accused products,  
20                   that makes sense given that it is a newer product and the  
21                   amount of documents going back in time would be fewer given  
22                   that it's a newer product that was, at the time the case was  
23                   stayed, still not being sold in the United States, and it was  
24                   a new product.

25                   THE COURT: All right. Let me interrupt you





1 that either we don't know how many unique documents are  
2 still left to be produced if we did search for [REDACTED] or you  
3 do know and it's something more than zero. Right?

4 MS. KIEPURA: Our understanding is that it  
5 would be -- if we were to search for [REDACTED] it would not be a  
6 significant number of additional documents that would need  
7 to be produced over what has already been.

8 THE COURT: And with respect to the depositions,  
9 did they have any incentive to fully explore with the  
10 deponents issues related to [REDACTED] at the time that they were  
11 taking the deposition?

12 MS. KIEPURA: They did. They deposed a Mr. Oh  
13 whose entire job description is that he worked on the [REDACTED]  
14 product, so given that they sought the deposition of the  
15 specific person, they clearly had the incentive to ask him  
16 questions about the [REDACTED] product.

17 THE COURT: All right. Well, first off, I guess  
18 what is it that you propose on behalf of Pace? That your  
19 counterclaim for noninfringement will be part of this trial  
20 or summary judgment process but no further discovery should  
21 be permitted? Is that the idea?

22 MS. KIEPURA: Yes, that's correct. Because  
23 essentially Gillette received samples from us five weeks  
24 before the close of fact discovery, eight weeks before the  
25 opening expert report, and essentially they appear to have

1 just chosen not to accuse [REDACTED] despite having those samples.  
2 Given that, it would not be fair to us given that we have  
3 got expert reports due in about three weeks now. It would  
4 not be fair to us to have to continue on given the amount  
5 of discovery that Gillette already had and their failure to  
6 accuse it in light of the discovery they already had.

7 THE COURT: How did the five weeks and eight  
8 weeks line up when you disclosed to them that you have been  
9 importing the [REDACTED] product?

10 MS. KIEPURA: It was immediate. We disclosed it  
11 and provided samples immediately at five weeks was when we  
12 disclosed and provided the samples, which was in line with  
13 the agreement that the parties had come to regarding the  
14 schedule. We sat down when the case was unsaved. We  
15 negotiated a schedule, negotiated a timeline for when parties  
16 were going to be providing updated discovery responses to  
17 account for things that had occurred during the pendency of  
18 the stay.

19 So that was five weeks when we provided the  
20 sample and made the disclosure. And then eight weeks is the  
21 same, eight weeks from the time, expert reports.

22 THE COURT: At the time you were negotiating the  
23 schedule, and at the time they dropped some of the claims,  
24 had you disclosed to them that you were importing the [REDACTED]  
25 If not, why should that not weigh heavily on my decision?

1 MS. KIEPURA: The issue with regard to the  
2 negotiation of the dropped claim, again, Gillette is making  
3 this argument that they would have chosen different claims  
4 to drop. The [REDACTED] product, as Gillette was well aware from  
5 the discovery that we had already provided on it, [REDACTED]

6 [REDACTED]  
7 There is a misrepresentation made during  
8 Gillette's argument which is that they mention that we  
9 said in our letter that the [REDACTED] That is  
10 not the case. That is not what we said. The [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] Frankly, they dropped the method claims because  
17 they were trying to prevent discovery of their own  
18 manufacturing process.

19 Then the other claims they dropped, which were  
20 the dropped claims, as noted in briefing, [REDACTED]

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 THE COURT: If I --

1 MR. ABATE: Your Honor, if I may.

2 THE COURT: Hold on.

3 MR. ABATE: I'm sorry.

4 THE COURT: If I don't grant the protective  
5 order and alternatively allow additional discovery, Ms.  
6 Kiepura, can we keep this trial on track for April?

7 MS. KIEPURA: Yes, absolutely.

8 THE COURT: Okay. Is there anything else you  
9 want to say, Ms. Kiepura?

10 MS. KIEPURA: Not at this point, Your Honor.

11 THE COURT: Mr. Abate, briefly, you can respond.

12 MR. ABATE: Yes. So on the one point about, it  
13 sounded like sort of a waiver argument that we didn't put it  
14 in our expert reports, we didn't do that because the letter  
15 was already before Your Honor about this issue. And in the  
16 expert reports, we noted that we would supplement, if allowed.

17 On the issue about the doped claims, a very  
18 interesting point Ms. Kiepura made is there is a [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] So I cannot say, and I don't think she can say,  
22 whether the doped claims would have been relevant to this  
23 product or not, categorically. The fact that she says the  
24 [REDACTED] means that we certainly may have  
25 asserted some of those claims. As I mentioned earlier, we

1 may have asserted the method claims.

2 With the respect to the documents, [REDACTED] was not  
3 a search term in the search terms string that was used. The  
4 fact that other product names were used, I mean that is  
5 fine. And maybe [REDACTED] gets picked up in passing, but you are  
6 not going to get the [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Just at a fundamental level, I have a problem  
11 with the idea that defendants are saying we're entitled to  
12 tell you what documents you get; and for this product, you  
13 are only getting core technical documents, and that is it.

14 That's what we get, Your Honor, when we are 90  
15 to 120 days out when the case begins. That is not what  
16 we're getting in discovery and it is absolutely inappropriate  
17 to have my expert come out and give an infringement opinion  
18 without the full scope of the materials before her.

19 THE COURT: What about the fact there is this  
20 counterclaim for noninfringement? What would you have me do  
21 with that?

22 MR. ABATE: Well, the counterclaim would apply  
23 to the products in the case if you grant the protective  
24 order. If you grant the protective order, the counterclaim  
25 applies to the products in the case, and the idea would be

1 that if the parties want to bring a separate suit, one of  
2 the parties on this other product, they can.

3 One thing about these other products, Your  
4 Honor, it seems to be [REDACTED]

5 [REDACTED] There  
6 is no guarantee that either party is going to file a new  
7 case on it, but the idea would be it's out of this case  
8 for this purpose, and it is not in the case for the  
9 counterclaims; but if the counterclaims are a sticking  
10 point, then I guess we have to go the discovery route.  
11 That's okay. We'll have to work that out in the schedule;  
12 and I think we have to extend the date for the final briefing.

13 The other accommodations I would ask for is  
14 that the witnesses are being deposed in the U.S. rather than  
15 Korea because that creates a lot more complications.

16 If they have any documents already translated  
17 relating to [REDACTED] that they produce the translations.

18 The parties would work together to revise the  
19 schedule. And I would suggest that we push the schedule  
20 on the summary judgment back, say, four to six weeks for  
21 the final briefing.

22 Also, on deposition hours, I would request  
23 12 hours with Dorco's witnesses and six hours with Dollar  
24 Shave witnesses. The reason why I make that request is  
25 because we have 12 hours of our deposition time left in the

1 total that you gave us at the beginning of the case, so I  
2 just wanted to make clear that we think we would need  
3 18 hours to complete.

4 The reason why we need the extra time with Dorco  
5 is just because the witnesses are deposed with a translator,  
6 they speak Korean, so that takes a fair amount of time. I  
7 suspect with Dorco, there would be more than one witness,  
8 but with Dollar Shave only one.

9 THE COURT: Thank you. I want to give you a  
10 decision on this so we have some time to go on to the other  
11 dispute.

12 My decision is that [REDACTED] is part of this case, and  
13 I don't think the request for discovery from the plaintiff  
14 is untimely under the totality of circumstances. So you are  
15 going to have to meet and confer and propose some reasonable  
16 accommodations and modification to the schedule so that every-  
17 one can have a full and fair opportunity to take discovery and  
18 serve expert reports and take depositions and litigate whether  
19 [REDACTED] in fact, infringes or not.

20 I think under the circumstances, it's clear to  
21 me that plaintiff has reasonably relied on what it was told  
22 by the defendants which before this day was essentially that  
23 [REDACTED] and after the stay was lifted but  
24 only after the schedule had been negotiated and, notably,  
25 only after the plaintiff dropped some of its claims, as they



1 were required here to do, only then was the plaintiff told  
2 about [REDACTED]

3 So I find from what I am understanding that  
4 the plaintiffs have not received a production of documents  
5 commensurate to the production for the other two accused  
6 products, they have not received that for the [REDACTED] They  
7 did not have the motivation or incentive to explore in  
8 deposition or, frankly, the ability to fully explore in  
9 deposition issues related to [REDACTED] because they didn't have  
10 the documents, and they're entitled to all that.

11 Now, I think on the whole, it's better that we  
12 not enter a protective order and in part create a fiction  
13 that the [REDACTED] doesn't exist. You always have to be concerned  
14 about how that could cause bigger problems at trial when we  
15 have to basically tell witnesses, pretend that [REDACTED] doesn't  
16 exist.

17 Further, I think there is time in the schedule  
18 between now and April, because I'm not moving the trial  
19 date, to have everyone be fully and fairly heard and take the  
20 necessary discovery to deal with the [REDACTED] Plus, there would  
21 be the issue about what to do with the counterclaim, were I  
22 to entertain the protective order.

23 I'm not ruling on the accommodations that  
24 Mr. Abate has mentioned. I want the parties to meet and  
25 confer on those. I can say on first pass they all sounded

1 reasonable to me, but that is not an order. I have not  
2 heard from the defendants on those.

3 As you all try to figure out how to modify the  
4 schedule, I am definitely willing to give you more time for  
5 getting the briefing in on the dispositive and the *Daubert*  
6 motions. I'll need at least a couple of weeks before any  
7 hearing for the briefing to be completed, but I am willing  
8 to move quickly in order to make this all happen.

9 So you all meet and confer. I hope you can work  
10 out a schedule. If you can't, then let's say by Wednesday,  
11 get me a joint letter with your disputes, and I will try to  
12 resolve them as soon as I can.

13 Are there any questions about that, Mr. Abate?

14 MR. ABATE: No, Your Honor. Thank you.

15 THE COURT: And Ms. Kiepura, any questions?

16 MS. KIEPURA: No, Your Honor.

17 THE COURT: Let's move on in our remaining time  
18 to the issue raised by defendants. The request for an  
19 order to produce more documents related to the infringement  
20 contentions.

21 Let me hear from defendants first, please.

22 MR. MIZZO: Good afternoon, Your Honor. Chris  
23 Mizzo from Kirkland representing the defendants.

24 Yes. By way of background, in October 2017,  
25 defendants moved to compel production of documents that form

1 the basis of Gillette's infringement contentions because  
2 those contentions relied on select images and results from  
3 tests of the accused products.

4 When Gillette refused to produce documents  
5 regarding those tests, we moved for relief. The case was  
6 stayed, but after the stay was removed, the Court issued  
7 its order on July 23, 2018 granting defendants' motion to  
8 compel.

9 The Court found that under the circumstances,  
10 Gillette waived any potential privilege or protection that  
11 they may want to apply to disclosed images, and that would  
12 not further the interest of fairness or efficiency to make  
13 defendants wait for expert discovery to learn Gillette is  
14 relying on the images and only thereafter be in a position  
15 to analyze and potentially take discovery of them.

16 So based on that order, on August 3rd, 2018,  
17 Gillette made a partial production of testing documents,  
18 but that production is deficient with notable gaps in the  
19 production.

20 Further, defendants sought additional limited  
21 deposition testimony by way of a 30(b)(6) notice of Gillette,  
22 and Gillette refused to produce any additional deposition  
23 testimony, or any deposition testimony on those tests.

24 So that leaves us or brought us to then file  
25 this motion. As part of this motion, we seek three different

1 types of materials, Your Honor:

2 The first are materials related to tests of  
3 accused products not expressly cited in the infringement  
4 contentions.

5 The second set of materials are materials  
6 related to tests expressly cited in the infringement  
7 contentions.

8 Then the third is a Gillette corporate witness  
9 for deposition.

10 Taking them in turn, beginning with materials  
11 related to tests of accused products not expressly cited in  
12 the infringement contentions.

13 Gillette has admitted that it limited its  
14 production in response to the Court's July 23rd order to  
15 "cited tests." It does not dispute there are tests of the  
16 same accused products that it has withheld.

17 Defendant's original motion wasn't limited to  
18 what was cited in the infringement contentions. Rather,  
19 they sought the materials that formed the basis for those  
20 contentions which is broader.

21 We believe the plain language of that, which Your  
22 Honor quoted in the decision that formed the basis, includes  
23 not only what was expressly cited in their infringement  
24 contentions but all of the tests that Gillette considered when  
25 shaping its infringement narrative. For example, if Gillette

1 tested a type of razor called the 4X, and it tested it ten  
2 times and nine of those gave terrible results and one was less  
3 terrible, and they decided to cite that less terrible result,  
4 we believe that all ten form the basis for the contention and  
5 should be produced. Thus, we believe that Gillette should be  
6 ordered to produce all the tests and related materials  
7 concerning the accused products whether or not expressly cited  
8 in the contentions.

9 Now, in their opposition, Gillette refers to  
10 uncited testing in a time that seems to suggest that what  
11 we're seeking is information related to unaccused blades.

12 To be clear, Your Honor, we are not seeking  
13 production of testing related materials for unaccused products.  
14 This request is simply for the products that have been accused  
15 for which they did submit tests, and it's stuff they would  
16 have considered when formulating their infringement contentions.

17 On to the second category of documents or  
18 materials. Materials related to tests that are expressly  
19 cited in the infringement contentions.

20 Gillette contends in its opposition that it has  
21 complied with the Court's Order, but it did not do so. Its  
22 production remains deficient. There are types of documents  
23 that we would expect to see that relate to the test expressly  
24 cited that they have not produced.

25 For example, inspections given to their

1 third-party testing company, EAG, whether correspondence or  
2 otherwise. They haven't produced any instructions. We would  
3 expect those instructions, for example, to include the types  
4 of tests and the scope requested, the locations, the tests  
5 for each sample, including which locations might be relied  
6 upon. Who ordered the test to be done? The directions for  
7 sample preparation, and so on.

8 There is also, it's also clear based on the  
9 documents that they produced that EAG has a job folder for  
10 the different tests that it conducts. Those job folders may  
11 have but we don't know because they haven't been produced,  
12 but we guestimate that the job folders would hold things  
13 like analytical protocols, analysis locations, results,  
14 interpretation results. They haven't produced those. They  
15 have only produced reports, finished reports.

16 In that regard, we also haven't seen any raw  
17 data or raw images. We haven't seen things that were not  
18 included in the reports that were taken of the exact accused  
19 products that are included in their infringement contention.

20 So, for example, if they took images of the  
21 same blade from different magnification, and they weren't  
22 included in the document that they produced, even though  
23 it's from the same exact test, they haven't produced them.

24 They haven't produced verifications regarding  
25 calibration of the equipment or dates when any of this stuff

1 was done. So there is a lot of material that we would expect  
2 to see there for the tests that even they expressly cite in  
3 their infringement contentions and we have not seen in their  
4 production. That is the second category of materials that we  
5 are seeking to compel disclosure of.

6 The third request, Your Honor, concerned a  
7 Gillette corporate witness. Now, Gillette admits it has  
8 refused to provide a 30(b)(6) deposition on the testing  
9 that is taking place; its primary argument that a deposition  
10 of Gillette would be wasteful because really EAG, that third  
11 party, has the information that we want.

12 But Gillette is mistaken. And even if EAG has  
13 that information or knows that information, that does not  
14 allow Gillette or shouldn't allow it to dodge a deposition.

15 First, there is no dispute that the information  
16 that is being sought is relevant, and that deposition  
17 testimony is appropriate.

18 Second, there is no dispute that Gillette has  
19 or should have some information responsive to the topics  
20 served on Gillette. In fact, based on Gillette's working  
21 relationship with EAG and greater familiarity with the  
22 tests done by EAG, we believe that Gillette played a role  
23 in the tests done by EAG that led to the tests cited and  
24 that form the basis of their infringement contentions. And  
25 we believe we should be allowed to explore that role and

1 the facts regarding those tests as part of the deposition.

2 THE COURT: All right.

3 MR. MIZZO: That way --

4 THE COURT: All right. Mr. Mizzo, right, we're  
5 starting to run out of time.

6 So with respect to EAG in this request, are you  
7 asking me to order something directly from EAG or you are  
8 only looking for whatever you can get from Gillette?

9 MR. MIZZO: Your Honor, the parties have agreed  
10 that EAG is going to sit for a deposition. This particular  
11 motion that is before you concerns the scope of discovery  
12 that we're going to obtain from Gillette which will also  
13 inform the scope of discovery that we would get from EAG.

14 So, for example, if Your Honor rules that they  
15 have withheld the materials and should produce the materials  
16 that concerns tests of the accused products that are not  
17 expressly cited, then that would also be testimony that EAG  
18 would provide on those tests that were done.

19 However, the motion that is before you, Your  
20 Honor, concerns compelling discovery from Gillette and  
21 concerning the tests.

22 THE COURT: Okay. And if I don't agree with  
23 your interpretation of the earlier motion and order, do you  
24 have an argument that I should nonetheless grant the relief  
25 that you are seeking today?



1 MR. MIZZO: I guess the question -- I guess  
2 it's difficult, Your Honor, because I'm not sure, when you  
3 say that you may not -- if you do not agree, what would that  
4 disagreement be, because I'm in a situation right now where  
5 their expert cites this testing that was done by Gillette.

6 They said that this testing was directed by  
7 counsel, not by a testifying expert. That is why they moved  
8 in front of you and said they should be protected because it  
9 has nothing to do with their testifying expert.

10 It turns out the testifying expert relies on the  
11 testing that has now been done. We believe it is appropriate  
12 under the Court's order, and we believe that the appropriate  
13 order, the scope of it would concern not only what was  
14 expressly cited but what form the basis for those contentions.

15 So I guess it would be depending on how you  
16 disagree with our reading of the order as to how I would  
17 respond, but I believe that the scope encompassing test of  
18 accused products is appropriate. And I believe that their  
19 withholding of additional materials related to even the  
20 stuff that they have disclosed is also inappropriate under  
21 the Court's order.

22 THE COURT: Okay. Thank you.

23 Let me hear from plaintiff, please.

24 MR. COTTLER: Good afternoon, Your Honor. This  
25 is Michael Cottler from Goodwin Procter.

1           So let me address the first issue, which is what  
2           does the Court's prior order require? That is D.I. 564.  
3           That, of course, is the question that the parties presented  
4           to Your Honor. It was not whether there was waiver over  
5           tests that Gillette did not cite in its contentions.

6           Gillette's response to defendants' letter  
7           directly answered that question; and in stark contrast,  
8           defendant's letter pretty much danced around it.

9           Going back to Docket No. 526, that was the  
10          parties' joint letter to the Court that had the parties ask  
11          the Court to set briefing on this issue. And the issue was  
12          Gillette's refusal to produce documents related to its  
13          testing of defendants' products relied upon by Gillette in  
14          its infringement contentions.

15          It is pretty clear that the parties were looking  
16          to address whether they should have to produce the documents  
17          relating to those tests that Gillette relied upon in its  
18          contentions and nothing more.

19          The defendants' opening motion was consistent  
20          with that. They said that Gillette should have to produce  
21          the documents that form the basis for its contention. And  
22          nowhere in their letter do they ever talk about tests that  
23          Gillette never relied upon. In fact, the whole point of  
24          defendants' letter, the harm they alleged was they didn't  
25          know how Gillette performed the testing that allegedly shows

1       infringement.

2                   Now, Your Honor, once the defendants got that  
3       discovery from Gillette, they said, oh, we want more. Now  
4       they want all the tests from July 6th. That wasn't what  
5       they asked for.

6                   THE COURT: Mr. Cottler, let's start there then.  
7       Why shouldn't I give them that at this point? I mean I  
8       have the same concern Mr. Mizzo raised. What if you all  
9       did ten tests and nine out of ten were not consistent with  
10      infringement? Shouldn't the defendant know that at this  
11      point in the case?

12                  MR. COTTLER: With respect, no, Your Honor. So  
13      the testing done by a nontestifying expert, here EAG, is  
14      protected under Rule 26(b)(4)(D), and that was formerly  
15      (b)(4)(D). In our response, Your Honor, Gillette cited  
16      the *Holinger* case, which addresses the protection covered  
17      by 26(b)(4)(D), and that governs discovery of facts known  
18      and obtained, held by experts and acquired or developed in  
19      anticipation of litigation or for trial.

20                  The Court there explains that this rule forbids  
21      discovery of the facts found or the opinions formulated by  
22      an opponent nontestifying expert with the exception of  
23      certain exceptional circumstances, which defendants have not  
24      shown here.

25                  The Court further noted that while the rule

1     itself does not address waiver, it identified that courts  
2     have generally held that partial disclosure of a  
3     nontestifying expert's work product does not waive rights  
4     to withhold undisclosed work product. That is at page 522  
5     of the decision, and it goes on to cite several examples  
6     of such cases, including ones from Delaware and New York.

7             At issue in *Holinger* was a report prepared by a  
8     non-testifying expert from which particular portions were  
9     disclosed in what I will call a committee report. The  
10    opposing side wanted the entirety of that report produced,  
11    arguing that producing part of it waived protection over  
12    the entirety of it. And the Court disagreed, holding that  
13    the disclosure of certain findings from the report did not  
14    automatically forfeit protection as to withheld information  
15    or place the entirety of the work at issue.

16            THE COURT: All right. Mr. Cottler, we're  
17    getting short on time.

18            MR. COTTLER: Sure.

19            THE COURT: So what about here, Dr. Ross  
20    apparently has told us now that she is the one that ordered  
21    the tests, and she is the one who relies on them in her  
22    infringement analysis. Doesn't that create a different  
23    situation here?

24            MR. COTTLER: No, Your Honor. It does not.

25            To start, Rule 26 also governs the discovery

1 that must be produced with an expert testifying report, and  
2 the rule requires that Dr. Ross produce all the materials  
3 that she consider, and Dr. Ross has done so, and any test  
4 reports from EAG that she considered were produced.

5 Now, Dr. Ross did dictate the protocol that  
6 was employed by EAG to carry out the tests that are cited  
7 in Gillette's contentions. It was ultimately its law firm  
8 that hired EAG as a nontestifying expert. So defendants,  
9 in their opening letter, try to make hay out of the fact  
10 that, well, Gillette said on the one hand that Gillette  
11 retained EAG. Now they're saying that Dr. Ross hired EAG or  
12 something to that effect. But the reality is that Gillette  
13 had to give the go ahead to EAG, or its counsel did, to do  
14 its testing, and EAG used its protocol that Dr. Ross provided.  
15 And to the extent she relied on or considered any testing by  
16 EAG, those were produced.

17 THE COURT: And so help me understand what you  
18 mean by "relied or considered." Do the defendants -- yes.  
19 Do the defendants have all of the test results that she has  
20 seen throughout this case?

21 MR. COTTLER: Yes, Your Honor.

22 THE COURT: Did they have all the test results  
23 that EAG conducted?

24 MR. COTTLER: Pardon me, Your Honor?

25 THE COURT: Let me put it this way: Has Dr.

1 Ross seen all of the test results that EAG produced?

2 MR. COTTLER: Yes. So produced to defendants,  
3 Your Honor?

4 THE COURT: If EAG did ten tests, did all ten go  
5 to Dr. Ross or did somebody in between Dr. Ross and EAG say  
6 which of the ten were going to go to Dr. Ross?

7 MR. COTTLER: Hold on one moment, Your Honor.

8 THE COURT: Sure.

9 (Pause.)

10 MR. COTTLER: I apologize, Your Honor.

11 There may have been some tests that Dr. Ross did  
12 not see, including some unaccused products. But one point  
13 I want to make is as a matter of fairness, defendants now  
14 have the complete testing that Dr. Ross considered and that  
15 Gillette relied on in its infringement contentions, including  
16 a protocol for how those tests were carried out. Defendants  
17 are capable of hiring an expert, if they hadn't already, and  
18 duplicating that protocol and comparing the results of their  
19 testing with the results that Gillette relied upon in its  
20 infringement contentions, and that Dr. Ross considered in her  
21 expert report.

22 THE COURT: Well, putting aside the non-accused  
23 products, I guess what this seems to be maybe turning on is  
24 are we all talking about the same thing when we say what  
25 Gillette, in its infringement contentions, or what Dr. Ross,

1 in her report, considered, formed the basis for and/or relied  
2 on? Do you see a distinction among those three things:  
3 considered, formed the basis, or rely?

4 MR. COTTLER: Sitting here today, Your Honor, I  
5 don't think I see a distinction. I know that the federal  
6 rules have changed a bit and maybe -- and I know it now says  
7 "materials considered," at one point maybe it said "relied."  
8 In my mind, it's all pretty similar.

9 THE COURT: And under any of those three,  
10 again, your representation is at least every test result  
11 that Dr. Ross has been exposed to with respect to the  
12 accused products has been provided to the defendants; is  
13 that right?

14 MR. COTTLER: That's correct, Your Honor.

15 THE COURT: But if I ask the same question  
16 about when Gillette prepared its infringement contentions  
17 that was the subject of the earlier order, it sounds like  
18 even if I am limiting it to accused products, you are not  
19 in a position to say that every test result that Gillette  
20 had had been provided to the defendants; is that right?

21 MR. COTTLER: By "Gillette," you are referring  
22 to Gillette's counsel?

23 THE COURT: Yes, as a representative of  
24 Gillette. Yes.

25 MR. COTTLER: There may have been such tests,

1       that's correct. By EAG.

2               THE COURT: Is there anything else you want to  
3 add, Mr. Cottler?

4               MR. COTTLER: Yes. To answer that question,  
5 Your Honor, I think I made my point. Now I can move on to  
6 the 30(b)(6) issue?

7               THE COURT: Yes, just briefly, please.

8               MR. COTTLER: Briefly. Okay. Well, briefly, I  
9 think that the Court should quash defendants' 436 notice of  
10 Gillette. As we represented to defendants, Gillette has  
11 no direct knowledge about the testing that EAG did.

12              EAG, in response to a subpoena from defendants,  
13 has agreed to be deposed, and so defendants look at that  
14 discovery from EAG. Any deposition of Gillette will be  
15 unreasonably cumulative; and Rule 26(b)(2)(C) gives the  
16 Court power to limit discovery if the discovery sought is  
17 unreasonably cumulative.

18              Parties hire experts all the time to do testing  
19 for trial, and those parties are never required to provide  
20 30(b)(6) testimony regarding the substance of the expert's  
21 testing or opinion, nor should they have to because they  
22 won't have direct knowledge of that information.

23              While Gillette does have access to some of the  
24 files that EAG has that was the result of Gillette paying  
25 the bills, that does not make Gillette an agent of EAG, and



1 so Gillette does not have to be knowledgeable about  
2 everything that EAG has knowledge about.

3 THE COURT: Is Gillette going to interpose  
4 any objection to EAG disclosing to defendants all the test  
5 results that EAG provided to Gillette?

6 MR. COTTLER: It would be the same amount of  
7 objection, Your Honor, the same Rule 26(b)(4)(D) protection.

8 THE COURT: Right. Meaning, yes, you do object  
9 to EAG providing this testimony and evidence; right?

10 MR. COTTLER: Yes, Your Honor.

11 THE COURT: All right. Thank you.

12 Mr. Mizzo, is there anything you want to respond  
13 to?

14 MR. MIZZO: Yes, Your Honor. I think the e-mail  
15 hit the nail on the head because we have learned that Dr.  
16 Ross conveyed a protocol to EAG. EAG used that to conduct a  
17 number of tests of the accused products. And then there has  
18 been cherrypicking for the infringement contentions that  
19 have been provided as well as what was shown to Dr. Ross.

20 We believe that when we sought what was the  
21 relief regarding the infringement contentions, this is  
22 before Dr. Ross had been identified as a testifying expert  
23 on infringement, we did seek the results and the tests that  
24 form the basis for the contentions, now this is made even  
25 more prejudicial by the fact that Dr. Ross was relying on

1 some subset of tests based on the testing protocol given by  
2 the third-party testing agency. So for the reasons I stated  
3 in the past, we would request enforcement of the Court's  
4 July 23 order.

5 With regard to the 30(b)(6) deposition, again,  
6 they haven't represented and nor would now be the time, that  
7 Gillette doesn't have any personal information regarding  
8 it, which is what I think they would need to do in order to  
9 say it wouldn't be appropriate to have a Gillette witness  
10 testify.

11 Their argument is simply that EAG has more  
12 information where we will take the deposition of EAG. If  
13 they want to designate EAG as a 30(b)(6) deposition or a  
14 witness, they are allowed to under the rules, but if they  
15 choose not to, then that is a choice of their own making,  
16 not of defendant.

17 So for those reasons, we would request that the  
18 Court grant our motion.

19 THE COURT: All right. I'm granting the  
20 defendants' motion. I think that that is consistent with,  
21 if not directly ordered by, the earlier order that I entered  
22 that we have been discussing.

23 I think whether you say produce the tests that  
24 EAG or Dr. Ross or Gillette considered or formed the basis  
25 for the contentions on which they relied, I think that all

1 of this was within the scope of what was at stake in  
2 connection with the prior motion.

3 We have now learned. What we have learned since  
4 I think only strengthens the basis of that ruling. That is,  
5 we have now learned that Dr. Ross is the one who set out the  
6 protocol for the tests. We learned that she is also the  
7 testifying expert in this case. To the extent it would be  
8 required, I think there is good cause to modify and expand  
9 the earlier offer so as to avoid a situation where under  
10 the totality of the circumstances here, it could be that  
11 numerous tests were done according to that same protocol and  
12 came up with materially different results, and that someone  
13 is somehow keeping those results from the very expert who  
14 designed the test protocol and is going to be testifying  
15 ultimately in front of a jury and opining as to infringement.

16 That does not seem consistent with the purposes  
17 of the whole process of discovery and trial that we're all  
18 engaged in under the circumstances here.

19 It follows that a deposition of Gillette is not  
20 cumulative or otherwise unduly burdensome. Therefore, I  
21 order that that deposition go forward as well.

22 So the ruling is for the defendants.

23 We're already past the time I had set for the  
24 call. But any questions about any of that, Mr. Mizzo?

25 MR. MIZZO: No, Your Honor. Thank you for your

1 time.

2 THE COURT: Mr. Cottler?

3 MR. COTTLER: No, Your Honor. Thank you.

4 THE COURT: Thank you all very much. Good-bye.

5 (Telephone conference 3:18 p.m.)

6

7 I hereby certify the foregoing is a true and accurate  
8 transcript from my stenographic notes in the proceeding.

8

9

/s/ Brian P. Gaffigan  
Official Court Reporter  
U.S. District Court

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